

REMARKS

The Decision of July 27, 2006, has been received and reviewed.

Claims 1-21 are currently pending and under consideration in the above-referenced application, each standing rejected.

Reconsideration of the above-referenced application is respectfully requested.

Rejections under 35 U.S.C. § 102(e)

Each of claims 1-6, 8, 9, 11, and 13-21 stands rejected under 35 U.S.C. § 102(e) for reciting subject matter which is allegedly anticipated by the subject matter described in U.S. Patent 5,747,274 to Jackowski (hereinafter "Jackowski").

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single reference which qualifies as prior art under 35 U.S.C. § 102. *Verdegaal Brothers v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

In its Decision, the Board of Patent Appeals and Interferences (hereinafter "the Board") read Jackowski as disclosing a method that includes the "substantially simultaneous" evaluation of a plurality of analytes. Decision, pages 6-7. The Board also noted that "concurrent" evaluation is different from "substantially simultaneous" evaluation. Decision, page 6.

It is respectfully submitted that Jackowski lacks any express or inherent description of a method that includes "concurrently" evaluating a plurality of analytes. Jackowski describes that multiple assays for different analytes may be conducted on a single sample that is obtained at a single point in time. Col. 22, lines 12-14. Thus, the amounts of markers that are *simultaneously present* in the sample may be accurately determined. Col. 22, lines 15-19. Assays for each of the analytes are not, however, conducted at the same time. Rather, a plurality of assays are performed within a given time frame (*e.g.*, thirty minutes) after the sample is obtained. Col. 22, lines 7-8. As an example, in reference to FIGs. 8-11, Jackowski describes a device in which a sample moves, by capillary action, substantially linearly through three detection zones at successive points in time. According to Jackowski, such assays are considered to be effected

“simultaneously” even though they are not effected at the same point in time. Col. 22, lines 2-19; *see also* col. 29, lines 50-63, col. 30, lines 18-26; col. 35, lines 60-68.

Therefore, Jackowski does not expressly or inherently describe a method that includes “concurrently evaluating a plurality of analytes in . . . a sample,” as would be required for Jackowski to anticipate each and every element of amended independent claim 1 under 35 U.S.C. § 102(e).

Each of claims 2-6, 8, 9, 11, and 13-21 is allowable, among other reasons, for depending either directly or indirectly from claim 1, which is allowable.

Claim 8 is also allowable because Jackowski does not expressly or inherently describe that a substantially simultaneous determination of the presence of at least one analyte in a sample may be effected by reacting at least one analyte in a sample with a corresponding reactive element, the corresponding reactive element being one of a plurality of reactive elements that are arranged in one or more patterns on the surface of a waveguide. It has been incorrectly asserted that Jackowski discloses this subject matter at several locations. Each citation that has been presented will now be specifically addressed. Col. 27, lines 40-49, of Jackowski merely discusses the possible use of a “variety of optoelectronic detection systems.” The description at col. 28, lines 1-11, of Jackowski is limited to a broad statement that a “ligand and its receptor may be covalently immobilized on the optical surface of a planar, fused-quartz waveguide . . .” At col. 29, lines 1-29, Jackowski merely describes splitting excitation light into two channels – that portion of Jackowski provides no disclosure regarding arrangement of capture molecules in a pattern on the surface of the waveguide. Furthermore, the discussion at col. 31, lines 1-21, and col. 33, lines 43-45 and 56-60, relates to immobilization of antibodies to a plurality of discrete locations on a membrane, not in a pattern on the surface of a waveguide.

Withdrawal of the 35 U.S.C. § 102(e) rejections of claims 1-6, 8, 9, 11, and 13-21 is respectfully requested, as is the allowance of each of these claims.

Rejections under 35 U.S.C. § 103(a)

Claims 7 and 10-12 have been rejected under 35 U.S.C. § 103(a) for reciting subject matter that is allegedly unpatentable over the subject matter taught in Jackowski, in view of teachings from U.S. Patent 4,224,304 to Sawai et al. (hereinafter "Sawai").

Each of claims 7 and 10-12 is allowable, among other reasons, for depending indirectly from claim 1, which is allowable.

CONCLUSION

It is respectfully submitted that each of claims 1-21 is allowable. An early notice of the allowability of each of these claims is respectfully solicited, as is an indication that the above-referenced application has been passed for issuance. If any issues preventing allowance of the above-referenced application remain which might be resolved by way of a telephone conference, the Office is kindly invited to contact the undersigned attorney.

Respectfully submitted,



Brick G. Power
Registration No. 38,581
Attorney for Applicants
TRASKBRITT, PC
P.O. Box 2550
Salt Lake City, Utah 84110-2550
Telephone: 801-532-1922

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